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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

IN RE STEC, INC. SECURITIES
LITIGATION

This Document Relates To:

ALL ACTIONS

Lead Case No. 8:09-cv-01304-JVS (MLG)

**DEFENDANTS' REPLY IN
SUPPORT OF REQUEST FOR
JUDICIAL NOTICE**

Judge: Hon. James V. Selna
Court: 10C
Date: June 13, 2011
Time: 1:30 p.m.

I. INTRODUCTION

Plaintiff objects to: (1) judicial notice of one document Defendant STEC, Inc. (“STEC”) filed with the Securities and Exchange Commission (“SEC”) (Ex. F); (2) judicial notice of various documents containing information relating to the stock holdings and trading plans of Defendants Manouch and Mark Moshayedi (Ex. G-L, S, Y, DD and EE); and (3) any highlighting in Defendants’ exhibits. As explained below, Plaintiff’s objections are meritless and Defendants’ request for judicial notice should be granted in its entirety.

II. ARGUMENT

A. SEC Filings Are Routinely Judicially Noticed

Plaintiff opposes judicial notice of STEC’s initial public offering prospectus publicly filed with the SEC on September 29, 2000. (*See* Ex. F.) Plaintiff objects on the grounds that the offering prospectus was not referred to in the Second Amended Complaint (“SAC”), precedes the June 16, 2009 to February 23, 2010 class period (the “Class Period”), and is not relevant to the matters before this Court. (RJN Opp. at 1-2.) Each of these arguments is meritless.

As an initial matter, documents do not need to be referenced in the complaint to be judicially noticed. The Ninth Circuit authorizes courts, in ruling on a motion to dismiss, to take judicial notice of documents filed with the SEC even if not expressly mentioned in the complaint. *See Dreiling v. Am. Express Co.*, 458 F.3d 942, 946 n.2 (9th Cir. 2006) (holding that SEC filings are the proper subject of judicial notice); *In re Stac Elec. Sec. Litig.*, 89 F.3d 1399, 1405 n.4 (9th Cir. 1996) (finding it proper to consider prospectus when ruling on motion to dismiss, “including portions which were not mentioned in complaint”). District court cases are in accord. *See In re Taleo Corp. Sec. Litig.*, No. C 09-00151, 2010 WL 597987, at *7 (N.D. Cal. Feb. 17, 2010) (taking judicial notice of documents “not explicitly referenced” in the complaint that were filed publicly with the SEC); *Morgan v. AXT, Inc.*, No. C 04-4362, 2005 WL 2347125, at *7 (N.D. Cal. Sept. 23, 2005)

(taking judicial notice of SEC Forms 4 even though they were not expressly referenced in the complaint on the ground that they are public documents); *Wietschner v. Monterey Pasta Co.*, 294 F. Supp. 2d 1102, 1109 (N.D. Cal. 2003) (taking judicial notice of SEC Forms 4 not explicitly referenced in the complaint because the filings were “integral to the stock sale allegations made in the Complaint”); *In re Turnstone Sys. Sec. Litig.*, No. C 01-1256, 2003 U.S. Dist. LEXIS 26709, at *106-07 (N.D. Cal. Feb. 4, 2003) (taking judicial notice of Forms 3, 4 and 10-Q not referenced in the complaint).

In addition, district courts often take judicial notice of matters of public record. Documents from a public agency, here the SEC, are public records and are thus judicially noticeable. *See, e.g., Torrance Redevelopment Agency v. Solvent Coating Co.*, 763 F. Supp. 1060, 1066 (C.D. Cal. 1991) (finding that “a public agency’[s] . . . documents, including letters, related to its activities are . . . public records” and proper subject of judicial notice); *Plevy v. Haggerty*, 38 F. Supp. 2d 816, 821 (C.D. Cal. 1998) (“[A] court may take judicial notice of matters of public record outside the pleadings”); *In re Silicon Graphics, Inc. Sec. Litig.*, 970 F. Supp. 746, 758 (N.D. Cal. 1997) (“[A] district court may take judicial notice of the contents of relevant public disclosure documents required to be filed with the SEC as facts capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.”) (quoting *Kramer v. Time Warner, Inc.*, 937 F.2d 767, 774 (2d Cir. 1991)). STEC’s offering prospectus here is a required SEC filing. Because this exhibit relates to the SEC’s official activities, it is a properly noticed public record.

Plaintiff next argues that the offering prospectus cannot be noticed because it is dated outside the Class Period. But Plaintiff ignores the fact that district courts routinely take judicial notice of public filings with the SEC outside of the class period. *See, e.g., Patel v. Parnes*, 253 F.R.D. 531, 545-46 (C.D. Cal. 2008) (taking judicial notice of Forms 4 outside of class period); *In re Hansen Natural Corp.*

1 *Sec. Litig.*, 527 F. Supp. 2d 1142, 1149 n.2 (C.D. Cal. 2007) (taking judicial notice
2 of SEC filings “dated after the filing of the Complaint”); *In re Netflix, Inc. Sec.*
3 *Litig.*, No. C04-2978, 2005 WL 1562858, at *5 (N.D. Cal. June 28, 2005) (holding
4 that “SEC filings are appropriately noticed by the Court” on a motion to dismiss,
5 even when those documents were filed with the SEC outside the class period).

6 Plaintiff’s final argument is that Exhibit F is not “relevant,” noting that the
7 registration statement is “not even from STEC.” (RJN Opp. at 2.) STEC was
8 originally incorporated in California in March 1990 as Simple Technology, Inc.
9 and was later renamed SimpleTech, Inc. in May 2001 and then STEC, Inc. in
10 March 2007. Regardless of STEC’s prior names, this document filed with the SEC
11 is the company’s initial registration statement and is therefore relevant to the case
12 here. Moreover, Plaintiff alleges that STEC’s inventory levels “through 2009”
13 show that STEC did not expect, and could not have fulfilled, a significant increase
14 in sales to OEMs other than EMC during the second half of 2009. (SAC ¶¶ 124-
15 38.) This claim is based in part on Plaintiff’s assumption that “cost of revenues”
16 reported by STEC in any given quarter is the same as the “inventory actually used
17 in a given quarter.” (*Id.* ¶ 134.) Exhibit F demonstrates that Plaintiff seeks to draw
18 a false equivalent between these two items. (*See* Mot. at 19.) Accordingly, Exhibit
19 F is relevant for purposes of evaluating the legitimacy of Plaintiff’s allegations
20 relating to STEC’s inventory.

21 The three cases Plaintiff relies on are all distinguishable. In both *Yanek v.*
22 *Staar Surgical Co.*, 388 F. Supp. 2d 1110, 1127 (C.D. Cal. 2005) and *In re Calpine*
23 *Corp. Sec. Litig.*, 288 F. Supp. 2d 1054, 1076-77 (N.D. Cal. 2003), the district
24 courts denied a request for judicial notice for documents that did not relate at all to
25 the claims raised in the original complaint. By contrast, Exhibit F relates directly to
26 the sufficiency of Plaintiff’s inventory allegations. Plaintiff also cites to *In re*
27 *Immune Response Sec. Litig.*, 375 F. Supp. 2d 983, 996 (S.D. Cal. 2005). But that
28 case involved exhibits that were “not the type of documents readily capable of

1 judicial notice, and Plaintiffs contest[ed] their authenticity.” *Id.* As explained
2 above, an initial public offering prospectus publicly filed with the SEC is judicially
3 noticeable, and Plaintiff cannot reasonably question its authenticity.

4 **B. Documents Regarding Stock Holdings Are Not Being Offered For**
5 **Their Truth**

6 Defendants request judicial notice of ten documents containing public
7 information relating to the stock holdings and trading plans of Defendants
8 Manouch and Mark Moshayedi. (*See* Ex. G-L, S, Y, DD and EE.) Plaintiff
9 concedes, that the Court may take judicial notice of the contents of these
10 documents (RJN Opp. at 3), but argues that the Court cannot consider the truth of
11 the facts reported in these documents (e.g., the dates of sales, number of shares
12 sold, sale price). (*Id.* at 2-3.) Plaintiff’s position is not consistent: Plaintiff points to
13 pieces of public information regarding Manouch and Mark Moshayedi’s stock
14 holdings and trading plans (*see* SAC ¶¶ 206-08), yet objects to similar information
15 offered to give the Court a more complete understanding of Defendants’ trading
16 history. Plaintiff’s argument is especially meritless given that Plaintiff does not
17 dispute the authenticity of any of these publicly filed documents.

18 Moreover, Defendants are not noticing these documents for the truth of their
19 contents, but to allow the Court to evaluate whether Plaintiff has pled facts creating
20 a strong inference of scienter. *See Gray v. First Winthrop Corp.*, 82 F.3d 877, 885
21 n.10 (9th Cir. 1996) (“[Objector’s] argument overlooks the fact that [the
22 memorandum] would be admissible not to prove the truth of the matter asserted –
23 i.e., that the assumptions were ‘contrary to fact’ – but rather to show scienter”);
24 *Garden City Emples. Ret. Sys. v. Anixter Int’l, Inc.*, No. 09-CV-5641, 2011 U.S.
25 Dist. LEXIS 35261, at *46 n.10 (N.D. Ill. Mar. 31, 2011) (explaining that
26 defendants’ Forms 4 may be admissible not to prove the information contained in
27 them, but “to demonstrate the state of mind of the Individual Defendants”); *In re*
28 *Intrabiotics Pharms., Inc. Sec. Litig.*, No. C 04-02675 JSW, 2006 U.S. Dist.

1 LEXIS 15753, at *39 (N.D. Cal. Jan. 23, 2006) (noting that courts may take
2 judicial notice of documents showing defendants purchased stock where such a
3 purchase “tends to undermine an inference of scienter”); *Allison v. Brooktree*
4 *Corp.*, 999 F. Supp. 1342, 1352 n.3 (S.D. Cal. 1998) (taking judicial notice of a
5 defendant’s Form 4 filed with the SEC where the defendant attempted to negate an
6 inference of scienter).

7 The cases cited by Plaintiff do not stand for the idea that public filings
8 cannot be used to evaluate the sufficiency of Plaintiff’s scienter allegations. As an
9 initial matter, two of the cases cited by Plaintiff do not involve SEC filings; they
10 involve evidentiary materials which courts have held are not proper subjects of
11 judicial notice. *See In re LDK Solar Sec. Litig.*, 584 F. Supp. 2d 1230, 1238-39
12 (N.D. Cal. 2008) (refusing to take judicial notice of a work email); *In re Network*
13 *Equip. Techs., Inc. Litig.*, 762 F. Supp. 1359, 1363 (N.D. Cal. 1991) (refusing to
14 “use judicial notice to generate an evidentiary record and then weigh evidence”
15 where defendants sought to introduce auditor reports and personal financial
16 records). Next, in *Patel v. Parnes*, 253 F.R.D. 531, 546 (C.D. Cal. 2008), and *Troy*
17 *Group, Inc. v. Tilson*, 364 F. Supp. 2d 1149, 1152 (C.D. Cal. 2005), the district
18 courts *did* take judicial notice of the public filings at issue. Finally, *In re*
19 *UNUMProvident Corp. Sec. Litig.*, 396 F. Supp. 2d 858, 877 (E.D. Tenn. 2005) is
20 not analogous. Unlike the defendant in that case, STEC is not seeking to notice the
21 SEC filings for their truth but to allow the Court to weigh the sufficiency of
22 Plaintiff’s scienter allegations. Consequently, judicial notice of public documents
23 describing the holdings of Defendants Manouch and Mark Moshayed is entirely
24 appropriate.

25 C. Highlighting Documents Is Not Prejudicial

26 For the Court’s benefit, Defendants highlighted the relevant sections of
27 various exhibits, many of which are quite lengthy. Plaintiff objects to any and all
28 highlighting on exhibits. (RJN Opp. at 1.) Because all of the original text is

